AGENDIZED ITEMS – The public is entitled to address the Committee on items appearing on the agenda before or during the Committee’s consideration of that item. Each speaker will be limited to approximately three minutes.

1. ROLL CALL

2. PUBLIC COMMENT PERIOD

3. REPORTS
   a. Considering – John Muir Health request that the Concord/Pleasant Hill Health Care District waive its right to terminate the Community Benefit Agreement with John Muir Health without cause in 2049, thereby extending the CBA until 2099. John Muir would jointly waive its same right. This action will facilitate John Muir’s investment of more than $250 million dollars into the Concord Campus and change no other aspects of the Community Benefit Agreement. Report by Valerie Barone, City Manager.

4. ADJOURNMENT

Next Meeting: Regular Meeting
Date: 6/12/2019 5:30 p.m.
ADA NOTICE AND HEARING IMPAIRED PROVISIONS
In accordance with the Americans with Disabilities Act and California Law, it is the policy of the City of Concord to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including those with disabilities. If you are disabled and require a copy of a public hearing notice, or an agenda and/or agenda packet in an appropriate alternative format; or if you require other accommodation, please contact the ADA Coordinator at (925) 671-3031, at least five days in advance of the hearing. Advance notification within this guideline will enable the City to make reasonable arrangements to ensure accessibility.

Distribution: City Council
Valerie Barone, City Manager
Susanne Brown, City Attorney
Kathleen Trepa, Assistant City Manager
Joelle Fockler, City Clerk
Staff Report

Date: May 8, 2019
To: Council Committee on Policy Development and Internal Operations
From: Valerie J. Barone, City Manager
Valerie.barone@cityofconcord.org
(925) 671-3150

Subject: John Muir Health request that the Concord/Pleasant Hill Health Care District waive its right to terminate the Community Benefit Agreement with John Muir Health without cause in 2049, thereby extending the CBA until 2099. John Muir would jointly waive its same right. This action will facilitate John Muir’s investment of more than $250 million dollars into the Concord Campus and change no other aspects of the Community Benefit Agreement

Recommended Action
Recommend approval to the Concord/Pleasant Hill Health Care District Board of the First Amendment of the Concord/Pleasant Hill Health Care District and John Muir Health’s Community Benefit Agreement (CBA) waiving the rights of both parties to terminate the Agreement without cause in 2049, thereby extending the CBA until 2099.

Background
In 1996, the Mt. Diablo Health Care District, later renamed the Concord-Pleasant Hill Health Care District (“District”), entered into the Community Benefit Agreement (“Agreement”) with John Muir Health (“JMH”). The Agreement conveys to JMH “title and interest in and to all of the assets and properties owned by the District” subject to a reversionary interest in favor of the District at the termination or expiration of the Agreement. Pursuant to the Agreement, JMH is obligated, among other things, to continue operation of a separately-licensed acute care hospital with emergency services on the Concord Medical Campus (“Concord Campus”). The initial term of the Agreement expires on December 31, 2049, but will automatically renew through December 31, 2099, (and thereafter at successive fifty-year increments through 2199) unless either party provides six-months advance notice of non-renewal.
Analysis
Several of the main hospital buildings on the Concord Campus will be non-compliant with the seismic standards effective in 2030 and are simultaneously reaching the end of their respective service lives. These include the B, C, and D towers as well as the Central Utility Plant supporting the entire Concord Campus. JMH is prepared, with appropriate approvals from the District and City, to invest over $250 million on the Concord Campus by 2030 in order to construct and equip new facilities so as to ensure continued high-quality care and patient access. The investment would bring the Campus into compliance with seismic requirements to be effective in 2030; involve construction of a new central utility plan to support all Campus operations; include the construction of a new surgery suite and inpatient imaging and support functions; and augment parking capacity.

Need for Waiver of Non-Cause Termination Right: JMH is beginning preparations for a bond offering to finance a significant part of the proposed construction and has indicated that bond underwriters will not support the offering if JMH could be removed from the Concord Campus by the District without cause in 2049 as currently permitted under the Agreement. In such a scenario, JMH would lose access to the very assets financed through the bond offering and required to generate the revenue for repayment of the bonds. For similar reasons, the JMH Board might be reluctant to invest such a significant amount of its aggregate capital pool on the Concord Campus if JMH remained at risk of eviction from the Campus without cause in thirty-years. As a point of reference, many of the current facilities on the Concord Campus have been in operation for almost sixty years. These impediments can be resolved by eliminating the District’s right to terminate the Agreement without cause in 2049.

Financial Impact
There is no direct fiscal impact to the Health Care District. However, without surety of a continued relationship with the Health Care District, the John Muir Board will not be able to invest the hundreds of millions of dollars needed to keep the hospital operating in Concord as a world class hospital facility. This would result in a significant degradation of this asset which would create quality of life and economic impacts to the City of Concord.

Public Contact
The Agenda was posted.

Attachments
1. Draft Waiver
2. Community Benefit Agreement
FIRST AMENDMENT TO COMMUNITY BENEFIT AGREEMENT

This First Amendment to Community Benefit Agreement ("First Amendment") is entered into on June 11, 2019 and amends that certain Community Benefit Agreement dated August 9, 1996 ("Original Agreement") by and between the Mt. Diablo Health Care District now known as the Concord/Pleasant Hill Health Care District, a political subdivision of the State of California ("District") and John Muir Medical Center now known as John Muir Health, a California nonprofit public benefit corporation ("John Muir"). District and John Muir are referred to herein individually as a “Party” and collectively as the “Parties”.

A. WHEREAS, the Original Agreement runs until December 31, 2049 ("Initial Term"), and automatically renews for three additional successive 50-year terms unless and until either Party gives the other Party one hundred eighty (180) days written notice prior to the expiration of the immediately preceding 50-year term of such Party's intention not to renew this Agreement ("Non-Renewal Notice"), subject to the termination provisions of the Original Agreement.

B. WHEREAS, John Muir desires to make a significant capital investment in the Concord campus by 2030 and, in order to secure financing, desires to extend the Initial Term by pre-exercising the first additional 50-year term.

C. WHEREAS, District desires to support continuing operation of and investment in the Concord campus.

NOW THEREFORE, in consideration of the promises and conditions set forth in the Original Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties amend the Original Agreement as follows:

1. Term. Each Party waives and relinquishes its ability to give the other Party a Non-Renewal Notice with respect to the Initial Term and both Parties agree to pre-exercise the first 50-year renewal term. As such, Term is hereby extended until December 31, 2099.

2. Reservation of Discretion. This First Amendment pertains only to the Term and does not limit in any way the discretion of District or the City of Concord ("City") in acting on any entitlements, permits, or approvals. The Parties acknowledge that compliance with California Environmental Quality Act ("CEQA") and other applicable laws and regulations would be required in connection with consideration of any entitlements, permits, or approvals, and that District and City shall retain full discretion with respect thereto.
3. **Original Agreement in Effect.** Except as expressly amended herein, all other terms and conditions of the Original Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF,** the Parties have executed this First Amendment on the date written above.

**JOHN MUIR:**

John Muir Health, a California nonprofit public benefit corporation

By:  
Name:  
Its:  

**DISTRICT:**

Concord/Pleasant Hill Health Care District, a California municipal corporation

By:  
Name: Carlyn S. Obringer, Chair

**ATTEST:**

By:  
Name: Joelle Fockler, MMC, Secretary

**APPROVED AS TO FORM:**

By:  
Name: Susanne Meyer Brown, District Counsel
COMMUNITY BENEFIT AGREEMENT

by and between

MT. DIABLO HEALTH CARE DISTRICT

and

JOHN MUIR MEDICAL CENTER
COMMUNITY BENEFIT AGREEMENT

THIS COMMUNITY BENEFIT AGREEMENT (the "Agreement") is entered into as of August 9, 1996 (the "Execution Date"), by and between MT. DIABLO HEALTH CARE DISTRICT, a political subdivision of the State of California ("District"), and JOHN MUIR MEDICAL CENTER, a California nonprofit public benefit corporation ("System") (collectively, the "Parties").

RECITALS

A. District owns and operates Mt. Diablo Medical Center, a licensed general acute care hospital located at 2540 East Street in Concord, California (the "Hospital"), as well as other real and personal property.

B. System owns and operates John Muir Medical Center, a licensed general acute care hospital located at 1601 Ygnacio Valley Road in Walnut Creek, California (the "Medical Center"), as well as other real and personal property.

C. The Board of Directors of both District and System have determined that combining their assets and operations on the terms and conditions of this Agreement would be in the best interests of healthcare in the communities they respectively serve (the policy of the combined System will be to promote quality healthcare in such communities).

D. After the Closing, the Parties intend to be governed by a single, unified board of directors that is broadly representative of the communities they respectively serve.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1

ASSETS

1.1 Restructuring of System; Retention of System Assets. On the Closing Date, subject to the terms and conditions of this Agreement, System will restructure its membership, board, articles and bylaws consistent with this Agreement. The purpose of this restructuring is to allow the System, after the Closing Date, to fairly represent the communities served by both the Hospital and the Medical Center. In order to do so, the Parties will combine their assets in the System. To effect that, as of the Closing Date, System shall have the right, title and interest in and to all of the following Medical Center assets and properties (collectively, the "System Assets"):

(a) Equipment. All equipment, furniture, trade fixtures and tangible personal property owned by System, including all tangible personal property owned by
System and located on, attached to or used in connection with the operation of Medical Center ("Medical Center Equipment");

(b) Supplies. All supplies and inventories owned by System as of the Closing Date and located on or used in connection with the operation of Medical Center ("Medical Center Supplies");

(c) Records. All patient medical records, the personnel records of System employees and the records of the operations of Medical Center ("Medical Center Records");

(d) Goodwill. All goodwill of System;

(e) Contracts. All rights of System under all contracts and leases to which System is a party, including those rights arising from any lease and other contracts between the Parties ("Medical Center Contracts");

(f) Warranties. All rights of System under express or implied warranties or other rights as to the System Assets;

(g) Proprietary Rights. All trademarks and trade names of System relating to Medical Center (including all rights in and to the name "John Muir Medical Center"), and all patents, copyrights, trade secrets and other proprietary rights of System;

(h) Prepaid Assets. All prepaid assets and deposits relating to the operation of System as of the Closing Date;

(i) Cash and Accounts Receivable. All cash, securities, accounts receivable and notes receivable, including accounts receivables payable to System or Medical Center for services rendered to Medicare and Medi-Cal patients prior to the Closing Date and any amounts due from the Medicare or Medi-Cal programs resulting from cost report settlements;

(j) Medicare and Medi-Cal Proceeds. All rights to the proceeds from accounts receivables payable to System or Medical Center for services rendered to Medicare and Medi-Cal patients prior to the Closing Date (including any amounts due from the Medicare or Medi-Cal programs resulting from cost report settlements);

(k) Refunds and Recoveries. All rights to refunds relating to any federal, state, local or foreign taxes payable to System and any recoveries from payors;

(l) Medical Center. All rights and title in and to the land and buildings described on Exhibit 1.1(l) ("Medical Center Land" and "Medical Center Buildings",

2
respectively) and all permanent fixtures and improvements to such Medical Center Land and Medical Center Buildings;

(m) **Related Entities.** All membership interests of System in and to John Muir Medical Foundation, dba John Muir Medical Network ("Foundation"); and

(n) **Other.** All other tangible or intangible assets leased, owned or possessed by System, other than the System Excluded Assets (as defined below).

1.2 **System Excluded Assets.** Notwithstanding the preceding section, the System Assets shall not include those assets described in Exhibit 1.2 (collectively, the "System Excluded Assets").

1.3 **System Liabilities.** Immediately after the Closing Date, subject to the terms and conditions of this Agreement, System’s obligations shall include all its pre-Closing liabilities and the Assumed Liabilities of District set forth in Section 1.6.

1.4 **District Assets.** On the Closing Date, subject to the terms and conditions of this Agreement, District shall assign, grant, convey, transfer and deliver to System, and System shall accept from District, all of District’s right, title and interest in and to all of the assets and properties owned by District, of every kind, character and description, whether tangible, intangible, personal, or mixed, and wherever located (collectively, the "District Assets"), including the following:

(a) **Equipment.** All equipment, furniture, trade fixtures and tangible personal property owned by District, including all tangible personal property owned by District and located on, attached to or used in connection with the operation of Hospital ("Hospital Equipment");

(b) **Supplies.** All supplies and inventories owned by District as of the Closing Date and located on or used in connection with the operation of Hospital ("Hospital Supplies");

(c) **Records.** All patient medical records (to the extent transferrable under applicable law), the personnel records of District employees (to the extent allowed by law), and the records of the operations of Hospital ("Hospital Records");

(d) **Goodwill.** All goodwill of District and Hospital;

(e) **Hospital Contracts.** All rights of District under all contracts and leases to which District is a party, except those rights arising from any lease and other contracts between the Parties ("Hospital Contracts"), subject to Section 1.5 of this Agreement.
(f) **Warranties.** All rights of District under express or implied warranties or other rights as to the District Assets;

(g) **Proprietary Rights.** All trademarks and trade names of District relating to Hospital (including all rights in and to the name "Mt. Diablo Medical Center"), and all patents, copyrights, trade secrets and other proprietary rights of District;

(h) **Prepaid Assets.** All prepaid assets and deposits relating to the operation of District and Hospital as of the Closing Date;

(i) **Cash and Accounts Receivable.** All cash, securities, accounts receivable and notes receivable, excluding any proceeds of District property taxes and accounts receivables payable to District or Hospital for services rendered to Medicare and Medi-Cal patients prior to the Closing Date (including any amounts due from the Medicare or Medi-Cal programs resulting from cost report settlements);

(j) **Medicare and Medi-Cal Proceeds.** All rights to the proceeds from accounts receivables payable to District or Hospital for services rendered to Medicare and Medi-Cal patients prior to the Closing Date (including any amounts due from the Medicare or Medi-Cal programs resulting from cost report settlements);

(k) **Refunds and Recoveries.** All rights to refunds relating to any federal, state, local or foreign taxes payable to District and any recoveries from payors or insurers which may be assigned;

(l) **Mt. Diablo Medical Center.** All rights and title in and to the land and buildings described on Exhibit 1.4(l) ("Hospital Land" and "Hospital Buildings", respectively) and all permanent fixtures and improvements to such Hospital Land and Hospital Buildings;

(m) **Diablo Related Entities.** All equity, partnership and membership interests of District in and to Mt. Diablo Behavioral Medicine Corporation, Mt. Diablo Surgery Center, Mt. Diablo Medical Center Practice Management Corporation, Health & Fitness Institute of Mt. Diablo Medical Center, as described in Exhibit 1.4(m), and any other related entities of District (collectively, the "Diablo Related Entities"), subject to Section 1.5 of this Agreement; and

(n) **Other.** All other tangible or intangible assets leased, owned or possessed by District, other than the District Excluded Assets (as defined below).

1.5 **District Excluded Assets.** Notwithstanding the preceding section, the District Assets shall not include any of the following (collectively, the "District Excluded Assets"): 
(a) **Mt. Diablo Hospital Foundation.** The assets of the Mt. Diablo Hospital Foundation;

(b) **District Records.** The books and records of District as they relate to District’s organization and existence as a political subdivision of the State of California; provided, however, that System shall have the right to inspect and copy (at System’s expense) such books and records from time to time upon a reasonable prior notice to District and to use such books and records if necessary for the operation of System;

(c) **Property Tax Proceeds.** The proceeds of general or special property taxes levied on behalf of District, whether collected or not; and

(d) **Medical Staff Dues.** Any funds of the Medical Staff raised from dues payable by its members.

1.6 **Assumed Liabilities.** On the Closing Date, subject to the terms and conditions of this Agreement, System shall assume (a) all obligations and liabilities of District under the Hospital Contracts which constitute part of the District Assets; and (b) all other known and unknown liabilities of District existing as of the Closing Date which are related to the District Assets, to the extent permitted by law (the "Assumed Liabilities").

1.7 **Excluded Liabilities.** Notwithstanding the foregoing or any other provision of this Agreement, System shall not assume or otherwise be responsible for (a) any obligations or liabilities which evidence or result from any fraudulent misrepresentation by any District Official made in connection with this Agreement; (b) any intentional concealment by any District Official of any material fact relevant to the transactions contemplated by this Agreement; and (c) any obligations of District to fund its administration, including any obligations to fund compensation and benefits payable to members or former members of the District Board (the "Excluded Liabilities"); provided, however, that System shall assume the health benefit obligations of the District to John Baie. For purposes of this section, "District Official" means any of the following: any District Board member; the Chief Executive Officer; and the Chief Financial Officer.

1.8 **Contracts or Other District Interests Requiring Consent for Transfer.** To the extent that any Contract or District's interest in any Diablo Related Entity may not be validly assigned, transferred, or conveyed without the consent or waiver of such Contract’s issuer or other party, or the consent of any governmental authority or other person of such assignment, transfer, or conveyance (each, an "Assignment") to System, or if the attempted Assignment to System would constitute a breach thereof or a violation of law, this Agreement shall not constitute an Assignment of such Contract or District’s interests in such Diablo Related Entity, and District shall not be obligated to assign, transfer or convey to System any such Contract or interest in such Diablo Related Entity without first having obtained all such necessary consents and waivers; provided, however, that prior to and after
the Execution Date, District shall use all reasonable efforts, and System shall cooperate with District in such efforts, to obtain all such necessary consents and waivers. If the necessary consents and waivers for the Assignment of any Contract or interest in any Diablo Related Entity are not obtained after reasonable efforts by District, both before and after the Closing Date, such Contract or interest shall be an District Excluded Asset.

ARTICLE 2
PRE-CLOSING COVENANTS

District and System covenant and agree as follows:

2.1 Compliance with District Law. The transactions contemplated by this Agreement are subject to approval in accordance with Section 32121(p)(2) of the California Health & Safety Code. The provisions of that section are summarized in Exhibit 2.1. In order to comply with that section, the Parties shall, prior to the Closing Date, do the following:

(a) Public Meetings. The District Board shall, prior to the Closing Date, comply with Section 32121(p)(2)(A)(i) of the California Health & Safety Code by holding at least five (5) properly noticed open and public meetings in accordance with the Ralph M. Brown Act to discuss this Agreement and all arrangements necessary hereto.

(b) Ballot Measure. The District Board shall, prior to the Closing Date, by resolution, submit to the voters of District a measure proposing the transfers contemplated by this Agreement in accordance with Section 32121(p)(2)(D) of the California Health & Safety Code.

(c) Approval of System Board. System shall grant to the District Board the right to approve, and the District Board shall approve, all initial board members of System as of the Closing Date in accordance with Section 32121(p)(2)(A)(ii) of the California Health & Safety Code.

2.2 System Board Members. The Parties acknowledge and agree that (a) the District Board shall have no right to select or appoint any members of the board of directors of System (the "System Board"), either before or after the Closing Date; (b) no more than two (2) members of the District Board may serve concurrently as members of the System Board; (c) District Board members serving as members of the System Board shall not serve together on any standing committee of the District Board; and (d) District Board members serving as members of the System Board shall receive no compensation from System.

2.3 Access to Premises and Information. Each Party shall grant to the other Party and the other Party’s counsel, accountants, and other representatives access during
normal business hours and upon reasonable prior notice to all properties, books, accounts, records, contracts, and documents of or relating to the legal status of its facilities and business. Each Party shall furnish or cause to be furnished to the other Party and the other Party’s representatives all data and information concerning its businesses, finances, and properties as may reasonably be requested by the other Party or its representatives, including: (a) a complete and accurate description of all inspections of such Party’s facilities and operations by any governmental agency or any consultant in the last five (5) years; (b) a description of any claim, lawsuit or governmental investigation threatened or pending against such Party; (c) a complete and correct list of the names of all current part-time or full-time employees of such Party, including their positions, compensation, seniority level, accrued vacation time and sick leave (to the extent consistent with applicable confidentiality laws); (d) a description of the activity level of each member of such Party’s medical staff; (e) a description of any situation in which the privileges of any physician on such Party’s medical staff are or have been reviewed, suspended, terminated, curtailed, or a proctor assigned because of perceived quality of care issues (to the extent consistent with applicable confidentiality laws); and (f) a complete and correct list and description, with expiration dates, of all licenses, permits, orders, approvals, authorizations and accreditations issued to or possessed by such Party.

2.4 Preservation of Business and Relationships. Each Party shall, until the Closing Date, use its best efforts to preserve its assets and business organizations intact, to keep available its present officers and employees, and to preserve its present relationships with suppliers, patients, and others having business relationships with it.

2.5 System Bylaws. On or before the Closing Date, System shall amend its bylaws so that the initial System Bylaws on the Closing Date will be in the form attached as Exhibit 2.5 (the "System Bylaws").

2.6 Maintenance of Insurance. Each Party shall, until the Closing Date, continue to carry its existing insurance, subject to variations in amounts required by the ordinary operations of its businesses.

2.7 Contracts and Commitments. Except as set forth in Exhibit 2.7, neither Party shall, without the prior written consent of the other Party, undertake or permit any of the following acts or events on or prior to the Closing Date:

(a) Any contract, commitment or transaction obligating it to at least $1,000,000 in expenditures over the term of the contract, commitment or transaction, including any capital expenditures in such amount;

(b) Any sale or disposal of any capital assets with a net book value in excess of $1,000,000;
(c) Termination or substantial modification of any significant clinical program or service; or

(d) Any action that ultimately requires an application under 22 California Code of Regulations 70105, which requires prior approval under 22 California Code Regulations Section 70301, or that requires a special permit under 22 California Regulations Code Section 70351.

2.8 Approvals and Waivers. The Parties shall use their respective best efforts to obtain all approvals and waivers from any and all persons or governmental agencies necessary for the execution, delivery and performance of this Agreement.

2.9 Challenges. In the event of any claim or action by any person or governmental agency or other private parties challenging or contesting the transactions contemplated by this Agreement, the Parties shall vigorously contest such claims or actions.

2.10 Escrow. No later than three (3) business days after the Execution Date, District shall open an escrow with Chicago Title Insurance Company ("Title Company") and direct Title Company to provide a preliminary title report to System. The Parties shall execute joint and mutual escrow instructions to Title Company, as necessary to consummate the transaction contemplated by this Agreement. Each Party shall also execute such additional instructions as are requested by the Title Company and are consistent with this Agreement. In the event of a conflict between this Agreement and the escrow instructions, this Agreement shall control. Title Company's escrow fees shall be borne by System.

2.11 Deposit of Documents by District. On or before the Closing Date, District shall deposit into escrow a duly executed and acknowledged grant deed conveying to System the Hospital Land, Hospital Buildings and any and all other real property which constitutes part of the District Assets.

2.12 Establishment of Medicare and Medi-Cal Lock-Box. On or before the Closing Date, District shall establish a Medicare and Medi-Cal Lock-Box with a bank mutually agreeable to the parties ("Lock-Box Bank"), shall enter into a Lock-Box Services Agreement with Lock-Box Bank ("Bank Services Agreement"), and shall enter into a Lock-Box Agreement with Lock-Box Bank and System ("Lock-Box Agreement"), both in the form attached as Exhibit 2.12.

2.13 Additional Documents. The Parties shall timely deposit into escrow such additional instructions, documents, information and funds as reasonably may be necessary, and such authorizing resolutions as reasonably may be requested, in order to consummate the transactions contemplated by this Agreement and the instruments executed pursuant to this Agreement.
2.14 Related Entities. District shall deliver to System all documents and agreements with respect to the Diablo Related Entities requested by System, including all documents necessary to effect a transfer of control over such Diablo Related Entities to System; provided, however, that with respect to the Health and Fitness Institute, Mt. Diablo shall assign to System all its contractual rights, subject to rights of consent. System shall deliver to District all documents and agreements with respect to the Foundation requested by District.

2.15 Refinancing. District currently has outstanding long-term debt in the form of revenue bonds, which may require refinancing as a result of this Agreement. System agrees to work with District cooperatively to seek a mutually agreeable way to integrate such bonds with the System, including a possible refinancing.

ARTICLE 3
CLOSING DATE

3.1 Closing Date. The closing of the transfers contemplated by this Agreement (the "Closing") shall take place at the San Francisco offices of Latham & Watkins at 10:00 a.m. on December 31, 1996, or such other place and time as set by mutual agreement of the Parties, but no later than June 30, 1997 (the "Closing Date"). The transfer of the District Assets shall be effective as of 12:01 p.m. on the day following on the Closing Date.

3.2 Delivery of Documents. At the Closing, District shall deliver to System:

(a) Transfer Documents. All bills of sale, assurances, transfers, assignments and any other documents that are necessary or desirable, in the opinion of System's legal counsel, acting reasonably, to effectively vest in System good and marketable title in and to the District Assets, and control of the Diablo Related Entities (other than HFI), free and clear of all liens, mortgages, encumbrances, equities or claims of every nature and kind, except as otherwise required by this Agreement;

(b) Consents. All consents required for the valid transfer of any and all Hospital Contracts which constitute part of the District Assets, including the consents of third party lessors to the assignment of the District's real property leases; and

(c) Lien Releases. The written discharge letters and lien releases of each institution or entity holding liens or security interests in the District Assets.

3.3 Close of Escrow. The following instructions shall apply to the Closing:

(a) Authorization to Close. The Title Company shall be authorized and instructed to close escrow when and only when:
(i) the Title Company holds the grant deed, and it has executed two (2) copies of the escrow instructions and returned them to counsel for District and System;

(ii) the Title Company is ready, willing and able to issue the title insurance policy described in Section 6.1(g);

(iii) the Title Company is prepared to deliver all documents and do all things strictly in compliance with the escrow instructions; and

(iv) the Title Company has received confirmation in person or by telephone from counsel for District and System that all other conditions precedent to Closing have been satisfied.

(b) **Closing Procedures.** Upon being duly authorized to close escrow by satisfaction of all the conditions in Section 3.3(a), the Title Company shall proceed to close escrow by recording the grant deed in the Office of the Recorder of Contra Costa County, California and issuing the title insurance policy to System.

(c) **Deliveries.** After Closing, the Title Company shall make the following deliveries:

(i) Deliver to System a recorded-endorsed copy of the grant deed;

(ii) Deliver to each of the Parties closing statements signed by the Title Company;

(iii) Deliver to System a duly executed bill of sale from District conveying the District Assets free and clear of liens, encumbrances and restrictions;

(iv) Deliver to System a Certificate of Non-Foreign Status executed by District, in form reasonably satisfactory to System; and

(v) Deliver to the Parties any other documents, instruments or agreements called for hereunder which have not previously been delivered.

**ARTICLE 4**

**REPRESENTATIONS AND WARRANTIES OF DISTRICT**

District hereby represents and warrants to System that, except as otherwise set forth in the Disclosure Schedule attached to this Agreement as Exhibit 4 ("District Disclosure Schedule"), the following representations and warranties are true and correct as of the Execution Date and will be true and correct as of the Closing Date:

10
4.1 **Good Standing.** District is a political subdivision of the State of California, and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its businesses as now being conducted.

4.2 **Ownership.** District owns all of the District Assets, including all the assets set forth in the District Financial Statements (as defined below), free and clear of any liens, security interests, claims and encumbrances. District has a valid leasehold interest in all leased equipment to be transferred to System under this Agreement. District has not sold, and is under no current obligation to sell any of the District Assets to any person or entity other than System.

4.3 **District Financial Statements.** The District Disclosure Schedule contains a true and complete copy of the audited balance sheet of District as of June 30, 1995 ("Last Fiscal Year End") and the related audited statement of operations for the year then ending. The District Disclosure Schedule also contains a true and complete copy of the unaudited balance sheet of District as of April 30, 1996 ("Stub Period Date"), together with the related unaudited statement of operations for the month then ending. The financial statements contained in the District Disclosure Schedule are referred to in this Agreement collectively as the "District Financial Statements." The District Financial Statements have been prepared in accordance with generally accepted accounting principles consistently followed throughout the periods indicated, and fairly present the financial position of District as of the respective dates of the balance sheets included in the District Financial Statements, and the results of its operations for the respective periods indicated. Unless otherwise specified in the District Financial Statements, all financial results of the operations of Hospital, and all assets and liabilities in connection with Hospital, are reported on the District Financial Statements. Except as reflected in the District Financial Statements there are no other material liabilities of District in connection with Hospital. The results of the operations of, and the assets and liabilities of, the District Related Entities are included in the District Financial Statements (other than the Health & Fitness Institute).

4.4 **Absence of Specified Changes.** Since the Stub Period Date, there has not been any transaction by District with respect to Hospital except in the ordinary course of business as conducted on that date or any material adverse changes in the financial condition, liabilities, assets or business of Hospital. In addition, since the Stub Period Date, there have not been any contracts or commitments entered into where the obligation exceeds $10,000, any sale or assignment of any District Asset except in the ordinary course of business, or expenditures in the capital budget, any security interest or lien, claim or encumbrance placed on any District Asset, any damage destruction or loss (whether or not covered by insurance) in excess of $10,000, any increase in the compensation or benefits to any employee (except in the ordinary course consistent with past practices), any termination or limitation of any license issued to District or Hospital or any agreement or commitment obligating District to do any of the foregoing.
4.5 **District Assets.** The District Assets (including the assets held under leases which are to be transferred to System hereunder) and the District Excluded Assets constitute all of the rights, properties and assets District uses or holds to operate Hospital. District has no knowledge of any capital expenditure (not including normal maintenance) in excess of $50,000 which is necessary for the continued conduct of the Hospital's business as presently conducted.

4.6 **Environmental.** There are no conditions at, in, on, under or related to the Hospital Land, Hospital Buildings or other District Assets which pose a hazard to human health or the environment other than such conditions which are in compliance in all material respects with applicable laws. There is and has been no production, use, treatment, storage, transportation, handling, discharge, disposal, arrangement for disposal or release or threatened release of any Hazardous Substance or Solid Waste, other than in compliance in all material respects with applicable laws, (i) at, in, on, under, from, over or related to the Hospital Land, Hospital Buildings or other District Assets or (ii) into or upon or over soil, surface water or groundwater at, on, under or related to the Hospital Land, Hospital Buildings or other District Assets. The District Disclosure Schedule contains a complete and correct list of all locations where District has placed, discarded, stored or discharged material amounts of Hazardous Substances or Solid Wastes. There are not now and there have been no underground tanks, below grade collection sumps or pits, land disposal facilities or surface impoundments at, on, under or related to the Hospital Land, Hospital Buildings or other District Assets which are or have been used for the collection, storage, treatment, handling, discharge or disposal of Hazardous Substances or Solid Waste. For the purposes of this Agreement, "Environmental Laws" mean all laws which deal with Solid Waste, hazardous waste, wastewater discharges, water quality, drinking water, air emissions, air quality, Hazardous Substances or employee health, safety or community right-to-know; "Hazardous Substances" means asbestos, radioactive substances, radon, PCB, petroleum and any substance deemed under federal or California law or regulation a hazardous or toxic substance, material, chemical substance, pollutant or waste, or a pesticide, fungicide, rodenticide, pollutant, contaminant, air pollutant or air contaminant; and "Solid Waste" means any substance deemed a waste under any applicable federal, state, county, local or foreign law, ordinance, rule or regulation.

4.7 **Inspections.** Except as described in the District Disclosure Schedule, any matters noted by any governmental agency or consultant in connection with any inspections of the Hospital and District Assets in the last five (5) years as requiring correction or modification have been so corrected or modified.

4.8 **Condition of Hospital Equipment.** The District Disclosure Schedule contains a complete and accurate description of all Hospital Equipment. Each item of Hospital Equipment is in good operating condition and repair, normal wear and tear excepted, and all such Hospital Equipment is located in the Hospital Building.
4.9 **Tax Returns and Audits.** Within the times and in the manner prescribed by law, District has filed all federal, state and local tax returns required by law and has paid all taxes, assessments and penalties due and payable. There are no existing Notices of Federal Tax Liens, or any State or local governmental taxing agency tax liens filed against District or Hospital and neither District nor any of its corporate affiliates have failed to pay or have refused to pay any Federal, State or any local governmental agency tax obligation after such has been assessed or demanded by any Federal, State, or local governmental taxing agency, including any interest, additional amounts, additions to tax and/or penalties.

4.10 **Litigation.** There is no claim, lawsuit or governmental investigation pending against Hospital or District, or against any of District’s affiliates.

4.11 **Hospital Contracts.** The District Disclosure Schedule contains a complete and accurate list of all Hospital Contracts. District is not in default in any material respect under any of the Hospital Contracts. To the best of District’s knowledge, all of the Hospital Contracts are valid and enforceable by District, subject to laws relating to bankruptcy, insolvency and equitable orders or decrees.

4.12 **Compliance with Laws.** District is in compliance in all material respects with all applicable local, state and federal laws, rules and regulations and the terms of all applicable licenses, permits, approvals, and authorizations. District has not received any notice from any governmental entity of any alleged violation of any laws and no investigation or review by any governmental entity with respect to District or Hospital is pending or, to the best of District’s knowledge, threatened. District is in compliance in all material respects with all Environmental Laws, and District has not received any notice of any alleged violation of any Environmental Law, or any claim pursuant to the provisions of any Environmental Law or otherwise for damage or injury to persons, property or natural resources as a result of a release or threatened release of a Hazardous Substance or Solid Waste. District does not know or have any reason to know that any release of any Hazardous Substance has come to be located on or beneath the Hospital Land. Hospital Buildings or other District Assets.

4.13 **Employee Plans.** Each employee plan, including all health, disability, dental, life, pension, death benefit, vacation plans, severance plans and other benefit plans or arrangements relating to the employees of Hospital is described in the District Disclosure Schedule. Except as set forth in the Disclosure Schedule, District has no deferred compensation or profit sharing plans.

4.14 **Brokers.** District has not incurred or become liable for any commission, fee, or other similar payment to any broker, agent, finder or other intermediary in connection with the negotiation of this Agreement or the consummation of any of the transactions contemplated by this Agreement.
4.15 **Employees.** Except as set forth in the District Disclosure Schedule, all current employees of District who work part-time or full-time at or for Hospital ("Hospital Employees") are employees at will. To the best of District’s knowledge, there are no threats of strikes or work stoppages by any Hospital Employees. Except as set forth in the District Disclosure Schedule, District is not a party to any contract or agreement with a labor union or any local or subdivision thereof in any way connected to Hospital, it has not been charged with any unresolved unfair labor practices, and, and to the best of District’s knowledge, there are no labor grievances or any present union organizing activity among any of the Hospital Employees.

4.16 **Medical Staff.** The District Disclosure Schedule contains a complete and correct list of all active, provisional and associate and other members of Hospital’s Medical Staff. District has delivered to System a correct and complete copy of the bylaws and rules and regulations of Hospital’s Medical Staff. With respect to Hospital’s Medical Staff, there are no pending or, to the best of District’s knowledge, threatened disputes with applicants, staff members or health professional affiliates.

4.17 **Licenses and Permits.** District has all licenses, permits, orders, approvals, authorizations and accreditations necessary for the business and operations of Hospital as currently conducted, all of which are in good standing and are in full force and effect. Hospital is accredited by JCAHO. There are no known deficiencies presently in existence which would preclude licensure or accreditations if reinspected. Hospital is licensed as an 273-bed inpatient acute care hospital by the Department of Health Services of the State of California. The Hospital is duly certified as a health care provider as required for participation in the Medi-Cal and Medicare programs. Hospital currently meets all material requirements of such programs and those of the Department of Health Services and OSHPD. District has complied in all material respects with all applicable federal, state, county and local laws, rules and regulations and has all licenses, permits, orders, approvals and authorizations of a material nature required for the conduct of the business of Hospital as presently conducted. No notice or warning from any authority with respect to the suspension, revocation, or termination of any such license, permit, order, approval, authorization or accreditation has been issued or given, nor is District aware of the proposed or threatened issuances of any such notice or warning. District has delivered to System true, correct and complete copies of (a) the most recent report and list of deficiencies, if any, related to Hospital of JCAHO and state licensing, and (b) the most recent fire marshal’s survey of Hospital.

4.18 **Hospital Proprietary Rights.** The District Disclosure Schedule contains a complete and correct list and description of all trademarks, trade names, patents, copyrights, trade secrets and other proprietary rights of District ("Hospital Proprietary Rights"). District owns and has the sole and exclusive right to use each of the Hospital Proprietary Rights.
4.19 **Hospital Buildings.** There are no material physical or mechanical defects of the Hospital Buildings, including, without limitation, the roof and plumbing, heating, air conditioning, electrical and other systems, and all such items are in good operating condition and repair, normal wear and tear excepted, and in compliance in all material respects with all applicable governmental laws or regulations.

4.20 **Land Use.** District does not have actual knowledge of any condemnation, zoning or other land-use regulation proceedings, either instituted, or planned to be instituted, which would detrimentally affect, in any material manner, the use and operations or the value of the Hospital Land or Hospital Buildings for their intended purpose, nor has District received notice of any special assessment proceedings affecting the Hospital Land or Hospital Buildings.

4.21 **No Liens.** There are no easements, covenants, restrictions, agreements, liens or other documents affecting title to the Hospital Land, the Hospital Building or any other real property which constitutes part of the District Assets, other than such matters as have been recorded of record.

4.22 **Disclosure.** The representations and warranties contained in this Article 4, the information contained in the District Disclosure Schedule, and the certificates required to be delivered by District pursuant to this Agreement are true and correct in all material respects and do not omit to state any material fact necessary to make the statements contained therein not misleading. There is no fact known to District or any of its affiliates which materially adversely affects the condition, properties, business and operations of District or Hospital except as set forth in the District Disclosure Schedule.

**ARTICLE 5**

**REPRESENTATIONS AND WARRANTIES OF SYSTEM**

System hereby represents and warrants to District that, except as otherwise set forth in the Disclosure Schedule attached to this Agreement as Exhibit 5 (the "System Disclosure Schedule"), the following representations and warranties are true and correct as of the Execution Date and will be true and correct as of the Closing Date:

5.1 **Good Standing.** System is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its businesses as now being conducted.

5.2 **Ownership.** System owns all of the System Assets, including all the assets set forth in the System Financial Statements as defined below, free and clear of any liens.
security interests, claims and encumbrances. System has not sold, and is under no current obligation to sell any of the System Assets to any person or entity.

5.3 System Financial Statements. The System Disclosure Schedule contains a true and complete copy of the audited balance sheet of System as of December 31, 1995 and the related audited statement of operations for the year then ending. The System Disclosure Schedule also contains a true and complete copy of the unaudited balance sheet of System as of the Stub Period Date, together with the related unaudited statement of operations for the month then ending. The financial statements contained in the System Disclosure Schedule are referred to in this Agreement collectively as the "System Financial Statements." The System Financial Statements have been prepared in accordance with generally accepted accounting principles consistently followed throughout the periods indicated, and fairly present the financial position of System as of the respective dates of the balance sheets included in the System Financial Statements, and the results of its operations for the respective periods indicated. Unless otherwise specified in the System Financial Statements, all financial results of the operations of Medical Center, and all assets and liabilities in connection with Medical Center, are reported on the System Financial Statements. Except as reflected in the System Financial Statements there are no other material liabilities of the System in connection with Medical Center. The results of the operations of and the assets and liabilities of, the Foundation are included in the System Financial Statements (since the Foundation commenced operations on February 1, 1996, these results are only in the unaudited statements).

5.4 Absence of Specified Changes. Since the Stub Period Date, there has not been any transaction by System with respect to Medical Center except in the ordinary course of business as conducted on that date or any material adverse changes in the financial condition, liabilities, assets or business of Medical Center. In addition, since the Stub Period Date, there have not been any contracts or commitments entered into where the obligation exceeds $10,000, any sale or assignment of any System Asset except in the ordinary course of business, or expenditures in the capital budget, any security interest or lien, claim or encumbrance placed on any System Asset, any damage destruction or loss (whether or not covered by insurance) in excess of $10,000, any increase in the compensation or benefits to any employee (except in the ordinary course consistent with past practices), any termination or limitation of any license issued to System or Medical Center or any agreement or commitment obligating System to do any of the foregoing.

5.5 System Assets. The System Assets and the System Excluded Assets constitute all of the rights, properties and assets System uses or holds to operate Medical Center. System has no knowledge of any capital expenditure (not including normal maintenance) in excess of $50,000 which is necessary for the continued conduct of the Medical Center’s business as presently conducted.
5.6 Environmental. There are no conditions at, in, on, under or related to Medical Center which pose a hazard to human health or the environment other than such conditions which are in compliance in all material respects with applicable laws. There is and has been no production, use, treatment, storage, transportation, handling, discharge, disposal, arrangement for disposal or release or threatened release of any Hazardous Substance or Solid Waste, other than in compliance in all material respects with applicable laws, (i) at, in, on, under, from, over or related to Medical Center or (ii) into or upon or over soil, surface water or groundwater at, on, under or related to Medical Center. The System Disclosure Schedule contains a complete and correct list of all locations where System has placed, discarded, stored or discharged material amounts of Hazardous Substances or Solid Wastes. There are no now and there have been no underground tanks, below grade collection sumps or pits, land disposal facilities or surface impoundments at, on, under or related to Medical Center which are or have been used for the collection, storage, treatment, handling, discharge or disposal of Hazardous Substances or Solid Waste.

5.7 Inspections. Except as described in the System Disclosure Schedule, any matters noted by any governmental agency or consultant in connection with any inspections of the Medical Center or System Assets in the last five (5) years as requiring correction or modification have been so corrected or modified.

5.8 Condition of Equipment. The System Disclosure Schedule contains a complete and accurate description of all Medical Center Equipment. Each item of Medical Center Equipment is in good operating condition and repair, normal wear and tear excepted, and all such Medical Center Equipment is located in the Medical Center Building.

5.9 Tax Returns and Audits. Within the times and in the manner prescribed by law, System has filed all federal, state and local tax returns required by law and has paid all taxes, assessments and penalties due and payable. There are no existing Notices of Federal Tax Liens, or any State or local governmental taxing agency tax liens filed against System or Medical Center and neither System nor any of its corporate affiliates have failed to pay or have refused to pay any Federal, State or any local governmental agency tax obligation after such has been assessed or demanded by any Federal, State, or local governmental taxing agency, including any interest, additional amounts, additions to tax and/or penalties.

5.10 Litigation. There is no claim, lawsuit or governmental investigation pending against Medical Center or System, or against any of System's affiliates.

5.11 Medical Center Contracts. The System Disclosure Schedule contains a complete and accurate list of all Medical Center Contracts. System is not in default in any material respect under any of the Medical Center Contracts. To the best of System's knowledge, all of the Medical Center Contracts are valid and enforceable by System, subject to laws relating to bankruptcy, insolvency and equitable orders or decrees.
5.12 Compliance with Instruments and Laws. System is in compliance in all material respects with all applicable local, state and federal laws, rules and regulations and the terms of all applicable licenses, permits, approvals, and authorizations. System has not received any notice from any governmental entity of any alleged violation of any laws and no investigation or review by any governmental entity with respect to System or Medical Center is pending or, to the best of System's knowledge, threatened. System is in compliance in all material respects with all Environmental Laws, and System has not received any notice of any alleged violation of any Environmental Law, or any claim pursuant to the provisions of any Environmental Law or otherwise for damage or injury to persons, property or natural resources as a result of a release or threatened release of a Hazardous Substance or Solid Waste at, on, under or from Medical Center facility. System does not know or have any reason to know that any release of any Hazardous Substance has come to be located on or beneath the Medical Center facility.

5.13 Employee Plans. Each employee plan, including all health, disability, dental, life, pension, death benefit, vacation plans, severance plans and other benefit plans or arrangements relating to the employees of Medical Center is described in the System Disclosure Schedule. System has no deferred compensation or profit sharing plans.

5.14 Brokers. System has not incurred or become liable for any commission, fee, or other similar payment to any broker, agent, finder or other intermediary in connection with the negotiation of this Agreement or the consummation of any of the transactions contemplated by this Agreement.

5.15 Employees. Except as set forth in the System Disclosure Schedule, all current employees of System who work part-time or full-time, at or for Medical Center ("Medical Center Employees") are employees at will. To the best of System's knowledge, there are no threats of strikes or work stoppages by any of the Medical Center Employees. System is not a party to any contract or agreement with a labor union or any local or subdivision thereof in any way connected to Medical Center, it has not been charged with any unresolved unfair labor practices, and, to the best of System's knowledge, there are no labor grievances or any present union organizing activity among any of the Medical Center Employees.

5.16 Medical Staff. The System Disclosure Schedule contains a complete and correct list of all active, provisional and associate and other members of the Medical Center's Medical Staff. System has delivered to District a correct and complete copy of the bylaws and rules and regulations of Medical Center's Medical Staff. With respect to Medical Center's Medical Staff, there are no pending or, to the best of System's knowledge, threatened disputes with applicants, staff members or health professional affiliates.

5.17 Licenses and Permits. System has all licenses, permits, orders, approvals, authorizations and accreditations necessary for the business or operations of Medical Center as currently conducted, all of which are in good standing and are in full force and effect.
Medical Center is accredited by JCAHO. There are no known deficiencies presently in existence which would preclude licensure or accreditations if reinspected. Medical Center is licensed as a 321-bed inpatient acute care hospital by the Department of Health Services of the State of California. Medical Center is certified as a health care provider as required for participation in the Medi-Cal and the Medicare programs. Medical Center currently meets all material requirements of such programs and those of the Department of Health Services and OSHPD. System has complied in all material respects with all applicable federal, state, county and local laws, rules and regulations and has all licenses, permits, orders, approvals and authorizations of a material nature required for the conduct of the business of Medical Center as presently conducted. No notice or warning from any authority with respect to the suspension, revocation, or termination of any such license, permit, order, approval, authorization or accreditation has been issued or given, nor is System aware of the proposed or threatened issuances of any such notice or warning. System has delivered to District true, correct and complete copies of (a) the most recent report and list of deficiencies, if any, related to Medical Center of JCAHO and state licensing and (b) the most recent fire marshal’s survey of Medical Center.

5.18 Medical Center Proprietary Rights. The System Disclosure Schedule contains a complete and correct list and description of all trademarks, trade names, patents, copyrights, trade secrets and other proprietary rights of System ("Medical Center Proprietary Rights"). System owns and has the sole and exclusive right to use each of the Medical Center Proprietary Rights.

5.19 Medical Center Buildings. There are no material physical or mechanical defects of the Medical Center Buildings, including, without limitation, the roof and plumbing, heating, air conditioning, electrical and other systems and all such items are in good operating condition and repair, normal wear and tear excepted, and in compliance in all material respects with all applicable governmental laws or regulations.

5.20 Land Use. System does not have actual knowledge of any condemnation, zoning or other land-use regulation proceedings, either instituted, or planned to be instituted, which would detrimentally affect, in any material manner, the use and operations or the value of the Medical Center Land and Medical Center Buildings for their intended purpose, nor has System received notice of any special assessment proceedings affecting the Medical Center facility.

5.21 No Liens. There are no easements, covenants, restrictions, agreements, liens or other documents affecting title to the Medical Center Land, the Medical Center Building or any other real property which constitutes part of the Medical Center Assets, other than such matters as have been recorded of record.

5.22 Disclosure. The representations and warranties contained in this Article 5, the information contained in the System Disclosure Schedule, and the certificates required to be
delivered by System pursuant to this Agreement are true and correct in all material respects and do not omit to state any material fact necessary to make the statements contained therein not misleading. There is no fact known to System or any of its affiliates which materially adversely affects the condition, properties, business and operations of System or Medical Center, except as set forth in the System Disclosure Schedule.

ARTICLE 6
CONDITIONS TO CLOSING

6.1 Conditions to Obligations of System. The obligations of System to be performed by System on or after the Closing Date are subject to the satisfaction or waiver by System on or before the Closing Date of the following conditions (if these conditions are not satisfied by the Closing Date, System shall have no further obligation or liability whatsoever to District, except for a breach of a covenant of System set forth herein):

(a) Representations. The representations and warranties of District contained in this Agreement shall be true in all material respects on and as of the Closing Date. District shall have delivered to System a certificate to such effect, dated as of the Closing Date and signed by an officer of District.

(b) Covenants. District shall have performed and satisfied in all material respects all covenants and conditions required by this Agreement to be performed or satisfied by District on or prior to the Closing Date.

(c) District Voter Approval. The District voters shall have approved a measure proposing the transfers contemplated by this Agreement in accordance with Section 32121(p)(2)(D) of the California Health & Safety Code.

(d) Member Approval. The members of System shall have approved the transactions contemplated by this Agreement and the System Bylaws in the form attached as Exhibit 2.5.

(e) No Material Adverse Change. There shall not have occurred since the Stub Period Date any loss or damage to any of the District Assets (whether owned or leased), whether or not covered by insurance, including, without limitation, environmental hazards, fire or earthquake, which would materially and adversely affect or impair the ability of System to conduct after the Closing Date the business now being conducted by District. District shall have delivered to System a certificate, dated as of the Closing Date, and signed by an officer of District, to such effect.

(f) State Hospital License. System shall have been issued any required licenses for the operation of the District Assets (or a binding or other commitment
satisfactory to System to issue or transfer such licenses to System shall have been received) from the applicable state governmental agency.

(g) **Title Insurance.** System shall have been issued, by a title insurance company acceptable to both Parties, an ALTA 1992 Form B owner’s title insurance policy guaranteeing and insuring the fee simple interest of System in and to the Hospital Land, the Hospital Building and any other real property which constitutes part of the District Assets, such policy to be subject to no exceptions or encumbrances other than the standard printed exceptions set forth in such form of policy, liens for real property taxes and assessments not then delinquent and the items set forth on Exhibit 6.1(g). Such title insurance policy shall be in the amount of at least $100 million and shall provide for reinsurance in such amounts, and pursuant to such agreements, as shall be reasonably acceptable to System. The Parties shall share equally in the cost of such policy, the ALTA survey and any endorsements.

(h) **Possession of District Assets.** System shall be entitled to immediate and complete possession of all of the District Assets as of Closing Date.

(i) **Consents.** District shall have obtained all material consents of third parties necessary for District to enter into this Agreement and the transaction contemplated by this Agreement.

(j) **Opinion of Legal Counsel.** System shall have received an opinion of District’s legal counsel in the form attached as Exhibit 6.1(j).

(k) **Opinion of Bond Counsel.** System shall have received the opinion of bond counsel, in a form acceptable to System.

(l) **Tail Insurance.** System shall have received evidence satisfactory to it that it is adequately covered as a named insured on the tail insurance policy of District.

(m) **Certified Copies of the District Resolutions.** District shall have furnished to System copies of resolutions duly adopted by the District Board approving the execution and delivery of the documents necessary to transfer the District Assets, and all other necessary or proper actions to enable District to comply with the terms and conditions of this Agreement, each of which shall be certified by the Secretary or Assistant Secretary of the District.

(n) **Approval of Board Members.** The District Board shall have approved the initial Board members appointed by the System as of the Closing Date, as required under Section 32121(p)(2)(A)(ii) of the California Health & Safety Code.

(o) **Representations of District Officials.** District shall have obtained and furnished to System a written representation and warranty from each official of District who
is or was involved in the making of this Agreement that such official has received no offer or promise of employment or other compensation prior to the Closing Date.

6.2 Conditions to Obligations of District. The obligations of District to be performed by District on or after the Closing Date are subject to the satisfaction or waiver by District on or before the Closing Date of the following conditions (if these conditions are not satisfied by the Closing Date, District shall have no further obligation or liability whatsoever to System, except for a breach of a covenant of District set forth herein):

(a) **Representations.** The representations and warranties of System contained in this Agreement shall be true in all material respects on and as of the Closing Date. System shall have delivered to District a certificate to such effect, dated as of the Closing Date and signed by an officer of System.

(b) **Covenants.** System shall have performed and satisfied in all material respects all covenants and conditions required by this Agreement to be performed or satisfied by System on or prior to the Closing Date.

(c) **District Voter Approval.** The District voters shall have approved a measure proposing the transfers contemplated by this Agreement in accordance with Section 32121(p)(2)(D) of the California Health & Safety Code.

(d) **Member Approval.** The members of System shall have approved the transactions contemplated by this Agreement and the System Bylaws in the form attached as Exhibit 2.5.

(e) **No Material Adverse Change.** There shall not have occurred since the Stub Period Date any loss or damage to any of the System Assets (whether owned or leased), whether or not covered by insurance, including, without limitation, environmental hazards, fire or earthquake, which would materially and adversely affect or impair the ability of System to conduct after the Closing Date the business now being conducted by it. System shall have delivered to District a certificate, dated as of the Closing Date, and signed by an officer of System, to such effect.

(f) **Opinion of System’s Counsel.** District shall have received an opinion of System’s counsel in the form attached as Exhibit 6.2(f).

(g) **Certified Copies of the System Resolutions.** System shall have furnished to District copies of resolutions duly adopted by the board of directors of System approving the execution and delivery of the documents necessary to transfer the District Assets, and all other necessary or proper actions to enable the System to comply with the terms of the Agreement, each of which shall be certified by the Secretary or Assistant Secretary of System.
(h) **Governmental and Regulatory Authorities.** District shall have determined, to its reasonable satisfaction, that System will be able to procure, within a reasonable period of time after the Closing Date, all licenses, authorizations and consents from all appropriate governmental and regulatory agencies reasonably necessary or convenient for System to operate the District Assets. Such licenses shall include, without limitation, licenses issued by the Department of Health Services, State of California, California State Board of Pharmacy and continued certification by the Medicare and Medical programs. District shall use its best efforts to assist System in procuring such licenses, authorizations and consents from all appropriate agencies.

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**ARTICLE 7**  
**POST-CLOSING COVENANTS**

District and System covenant and agree as follows:

7.1 **Compliance with District Law.**

(a) **Operation of District Health Care Facilities.** System shall operate and maintain District’s health care facilities and its assets for the benefit of the communities served by District in accordance with Section 32121(p)(2)(A)(iv) of the California Health & Safety Code.

(b) **Use of Funds.** System shall use any funds received from District at the outset of this Agreement or any time thereafter during the term of this Agreement only to reduce District indebtedness, to acquire needed equipment for District’s health care facilities, to operate, maintain and make needed capital improvements to District’s health care facilities, to provide supplemental health care services or facilities for the communities served by the District, or to conduct other activities that would further a valid public purpose if undertaken directly by the District in accordance with Section 32121(p)(2)(A)(v) of the California Health & Safety Code.

7.2 **Emergency Services.** System shall maintain basic emergency services at Hospital and Medical Center.

7.3 **Hospital/Medical Center Licensure.** System shall maintain separate acute care hospital licenses from the Department of Health Services of the State of California for each of Hospital and Medical Center.

7.4 **Community Benefit Corporation.** On the Closing Date, System shall establish a Community Benefit Corporation which shall be operated and governed as set forth in Section 5.6 of the System Bylaws (the System Bylaws are attached as Exhibit 2.5).
7.5 **District Board and John Muir Association Approval.** System shall not, without the prior written consent of the District Board and the John Muir Association, (a) sell, transfer or otherwise dispose of all or substantially all the assets of the System; (b) issue a membership to any person or entity; (c) merge with any other person or entity, unless System is the surviving corporation in the merger; or (d) amend Section 5.6 of the System Bylaws, including its provision that System contribute One Million Dollars ($1,000,000) per year to a Community Benefit Corporation, as defined therein. System shall also obtain required consents to such a transaction under any applicable supermajority provisions in the Bylaws. In addition, System shall not, without the consent of the District Board, amend Section 3.5(f) of the System Bylaws. Finally, System shall not, without the consent of the John Muir Association, amend Section 3.5(g) of the System Bylaws.

7.6 **Records.** System shall keep and preserve, for so long as legally required, all medical records, medical staff credentialing files, employee records, and other records of the Hospital existing as of the Closing Date and which are required to be kept and preserved by any applicable federal or state law or regulation or in connection with any claim or controversy still pending involving District. Any existing records at the termination of this Agreement shall be returned to District upon such termination.

7.7 **Use of Space; Administrative Support.** System shall make available to the District Board and Community Benefit Corporation such office space as may be necessary for the District Board and Community Benefit Corporation to properly conduct their respective activities after the Closing Date. System shall also make available to the District Board and Community Benefit Corporation, upon reasonable notice, such conference and meeting space as may be necessary for the District Board and Community Benefit Corporation to properly conduct their respective activities after the Closing Date, subject to normal scheduling constraints. Finally, System shall provide $25,000 per year of support to District for its administrative activities.

7.8 **Benefit Programs.** System shall administer employee compensation, benefit and retiree health programs in accordance with the terms and conditions of applicable laws.

7.9 **No Discrimination.** System shall not restrict admissions of patients to the Integrated Health System on the basis of race, religion, gender, age or sexual preference.

7.10 **Medical Staff.** System shall enact policies under which properly licensed physicians may join the medical staff of Hospital and/or Medical Center if the physician meets the applicable requirements for admission as set forth in the applicable medical staff bylaws, rules and regulations.

7.11 **Hiring of Employees.** System shall, as of the Closing Date, hire all persons who are employees of District as of the Closing Date, at salaries and benefits at least equal to those provided by District at the Closing Date. Notwithstanding the foregoing, System
shall not make any offer or promise of employment or other compensation to any District
public official involved in the making of this Agreement prior to the Closing Date, and shall
have no obligation to employ or otherwise compensate any District public official involved in
the making of this Agreement either before or after the Closing Date.

7.12 Existing Memoranda of Understanding. As of the Closing Date, System
shall recognize those employee organizations which formally represent employees within the
current District units ("Employee Organizations") and shall accept such units as appropriate
for representation and as defining the scope of representation of each such Employee
Organization. System acknowledges that District has entered into a Memorandum of
Understanding with each of the Employee Organizations, copies of which are attached as
Exhibit 7.12 (collectively, the "MOUs") and will comply with terms and conditions of the
MOUs entered into by District through the balance of the term of each such MOU or until
such MOU has been lawfully terminated or modified, whichever shall occur the sooner.
District and System agree that for the purposes of representation by Employee Organizations,
employees have a right to self-determination.

7.13 Lock-Box Agreement. District shall not, without the prior written consent of
System, terminate, modify or otherwise alter the Bank Services Agreement.

7.14 CEO of System. The President/Chief Executive Officer of System as of the
Closing Date shall be J. Kendall Anderson.

7.15 John Muir Medical Foundation. System shall, within one hundred twenty
(120) days after the Closing Date, appoint to the board of directors of the Foundation a
person who resides or has his or her principal place of business within the District
boundaries.

7.16 Non-Compete. During the term of this Agreement, neither District nor any of
its affiliates shall, without the prior written consent of System, own any equity, shareholder,
partnership, venture, lessor or other interest in, manage, or be an officer, director, venurer
or partner of any person or entity which does business in Contra Costa County, California
and which provides inpatient, outpatient, skilled nursing, rehabilitation, physician, ancillary,
payor or any other kind of healthcare services, or any fundraising for any such activities.

7.17 Indemnification.

(a) Indemnification by System. System shall indemnify, defend and hold
harmless District from and against any and all costs, losses (including diminution in value),
taxes, liabilities, obligations, damages, lawsuits, deficiencies, claims, demands, and expenses
(whether or not arising out of third-party claims), including interest and penalties, attorneys'
fees and all amounts paid in investigation, defense or settlement of any of the foregoing
("Damages"), incurred in connection with, arising out of, resulting from or incident to: (i)
any act or omission of System occurring after the Closing Date; or (ii) any Assumed Liability.

(b) **Indemnification by District.** District shall indemnify, defend and hold harmless System from and against any and all Damages incurred in connection with, arising out of, resulting from or incident to: (i) any act or omission of District occurring after the Closing Date; or (ii) any Excluded Liability.

(c) **Cooperation.** The indemnified Party shall cooperate in all reasonable respects with the indemnifying Party and such attorneys in the investigation, trial and defense of any lawsuit or action and any appeal arising therefrom; **provided, however,** that the indemnified Party may, at its own cost, participate in the investigation, trial and defense of such lawsuit or action and any appeal arising therefrom. The Parties shall cooperate with each other in any notifications to insurers.

(d) **Defense of Claims.** If a claim for Damages (a "Claim") is to be made for indemnification under this Agreement, the Party claiming such indemnification shall give written notice (a "Claim Notice") to the indemnifying Party as soon as practicable after the Party entitled to indemnification becomes aware of any fact, condition or event which may give rise to Damages for which indemnification may be sought. If any lawsuit or enforcement action is filed against any Party entitled to the benefit of indemnity under this Agreement, written notice shall be given to the indemnifying Party as promptly as practicable (and in any event within fifteen (15) calendar days after the service of the citation or summons). The failure of any indemnified Party to give timely notice shall not affect rights to indemnification, except to the extent that the indemnifying Party demonstrates actual damage caused by such failure. After such notice, if the indemnifying Party acknowledges in writing to the indemnified Party that the indemnifying Party shall be obligated under the terms of its indemnity in connection with such lawsuit or action, then the indemnifying Party shall be entitled, if it so elects: (i) to take control of the defense and investigation of such lawsuit or action, (ii) to employ and engage attorneys of its own choice to handle and defend the same, at the indemnifying Party's cost, risk and expense unless the named parties to such action or proceeding include both the indemnifying Party and the indemnified Party and the indemnified Party has been advised in writing by counsel that there may be one or more legal defenses available to such indemnified Party that are different from or additional to those available to the indemnifying Party, and (iii) to compromise or settle such claim, which compromise or settlement shall be made only with the written consent of the indemnified Party, such consent not to be unreasonably withheld. If the indemnifying Party fails to assume the defense of such claim within fifteen (15) calendar days after receipt of the Claim Notice, the indemnified Party against which such claim has been asserted will (upon delivering notice to such effect to the indemnifying Party) have the right to undertake, at the indemnifying Party's cost and expense, the defense, compromise or settlement of such claim on behalf of and for the account and risk of the indemnifying Party. In the event the indemnified party assumes the defense of the claim, the indemnified Party will keep the
indemnifying Party reasonably informed of the progress of any such defense, compromise or settlement. The indemnifying Party shall be liable for any settlement of any action effected pursuant to and in accordance with this Section and for any final judgment (subject to any right of appeal), and the indemnifying Party agrees to indemnify and hold harmless an indemnified Party from and against any Damages by reason of such settlement or judgment.

7.18 **Collection of Accounts Receivable and Letters of Credit.** At the Closing, System will acquire under this Agreement, and thereafter System shall have the right and authority to collect all receivables, letters of credit and other items which constitute a part of the District Assets, and District shall within forty-eight (48) hours after receipt of any payment in respect of any of the foregoing, properly endorse and deliver to System any letters of credit, documents or checks received on account of or otherwise relating to any such receivables, letters of credit or other items. District shall promptly transfer or deliver to System any cash or other property that District may receive in respect of any deposit, prepaid expense, claim, contract, license, lease, commitment, sales order, purchase order, letter of credit or receivable of any character, or any other item, constituting a part of the District Assets.

**ARTICLE 8**

**TERM AND TERMINATION**

8.1 **Term.** This Agreement shall be effective until December 31, 2049, and shall thereafter automatically renew for three additional successive 50-year terms, unless and until either Party gives the other Party one hundred eighty (180) days written notice prior to the expiration of the immediately preceding 50-year term of such Party's intention not to renew this Agreement, subject to the termination provisions of this Agreement.

8.2 **Pre-Closing Termination.** System and District Board, on behalf of District, shall each have the right to terminate this Agreement upon thirty (30) days written notice if the Closing shall not have occurred by June 30, 1997.

8.3 **Post-Closing Termination by District Board.** After the Closing Date, District Board, on behalf of District, shall have the right to terminate this Agreement in the event of the following:

(a) Failure by System to comply with Sections 7.1, 7.2, 7.3 or 7.4 of this Agreement and such failure is not cured after written notification of such failure is delivered by District to System and the provisions of Section 8.5 are complied with;

(b) The appointment of a receiver to take possession of System, or of System’s interest in Hospital or System’s operations;
(c) System commences a voluntary case or other proceeding under any bankruptcy laws, to the extent such a termination right is enforceable; and

(d) An involuntary case or other proceeding is commenced under the bankruptcy laws, and such involuntary case or other proceeding remains undischmissed and unstayed for a period of 90 days, to the extent such a termination right is enforceable.

8.4 Post-Closing Termination by System. After the Closing Date, System shall have the right to terminate this Agreement in the event of the following:

(a) Facility upgrade cost to System with respect to Hospital in any 12-month period in excess of Fifteen Million Dollars ($15,000,000) over the amount which is covered by insurance, if any, or such cumulative costs of Thirty Million Dollars ($30,000,000) over any 36-month period. Any estimated costs to upgrade or repair the facility to comply with current or reasonably anticipated codes shall be included in the year such costs can reasonably be assessed, regardless of whether or when such repairs or upgrades are actually made;

(b) System, as a whole, has operating expenses (including depreciation and interest) in excess of operating revenues ("Operating Losses") of more than Eight Million Dollars ($8,000,000) for each of two (2) consecutive fiscal years, determined in accordance with generally accepted accounting principles;

(c) System, as a whole, sustains Operating Losses over any three fiscal years of more than Sixteen Million Dollars ($16,000,000), determined in accordance with generally accepted accounting principles;

(d) Breach of any one or more the representations and warranties of District contained in this Agreement which results in Damages to System of more than Five Million Dollars ($5,000,000) for any individual breach or Ten Million Dollars ($10,000,000) in the aggregate; or

(e) On or after January 1, 2004, with or without cause, by two-thirds (2/3) or greater vote of the System Board.

8.5 Notice and Right to Cure. As a condition to pursuing any remedy for an alleged breach, default or failure of System under this Agreement, including District’s right to terminate this Agreement pursuant to Section 8.3(a), District Board shall provide written notice of any such alleged breach, default or failure and shall specify in detail the alleged event of breach. System shall have ninety (90) days after receiving such notice in which to cure the default; provided, however, that if the default cannot be cured with such ninety (90) days, System shall provide evidence to District that demonstrates that System is taking reasonable actions to cure the default in a timely manner. Such evidence shall include a
time schedule for curing the default, and System shall comply with such time schedule. District may proceed with those remedies set forth in Section 8.6 if System does not comply with the time schedule or, if at the end of the ninety (90) day cure period, System has not cured the default or has not provided the required evidence.

8.6 **District's Remedies.** In the event of System's default and failure to cure after compliance by District with the terms of Section 8.5, District Board, on behalf of District, may, in addition to other rights afforded by law:

(a) Continue this Agreement in full force and effect (for so long as District does not terminate System's right to possession of the District Assets), and District shall have the right to enforce all rights and remedies under this Agreement, including a suit for specific performance; or

(b) Terminate this Agreement and System's right to possession of the District Assets, and may require System to provide an accounting and relinquish all title to and control of the District Assets.

8.7 **Termination Disputes.** In the event of any dispute regarding or relating to the termination of this Agreement by District Board, on behalf of District, this Agreement may not be terminated unless and until such dispute has been finally adjudicated.

8.8 **Permissible Terminations.** Except as specifically set forth in this Article 8, neither Party shall have the right to terminate this Agreement. Any termination of this Agreement not in accordance with all of the terms and provisions of this Article 8 shall be null and void, and shall have no legal force and effect.

8.9 **Transfer of District Assets Upon Termination.** Upon termination of this Agreement in accordance with this Article 8, including Section 8.7, System shall transfer to District all assets transferred to System by District pursuant to this Agreement, and all assets accumulated by System during the term of this Agreement arising out of or from the operation of the transferred assets in accordance with Section 32121(p)(2)(A)(iii) of the California Health & Safety Code. The Parties acknowledge and agree that, in such event, System shall transfer to District: (a) the Hospital Land; (b) the Hospital Building; (c) all other tangible real and personal property that constitutes part of the District Assets (including improvements to such property); and (d) an amount, by wire transfer, equal to the sum of the following:

(i) an amount equal to that percentage of Net Assets of System as of the termination date equal to the percentage of Net Assets of both System and District that District owned as of the Closing Date; for this purpose, Net Assets shall mean the book value of all assets, other than property, plant and equipment; less
(ii) if the bond indebtedness of the District has been integrated with that of the System, an amount equal to that percentage of the Liabilities of the System as of the termination date equal to the percentage of Liabilities of both System and District owed by District as of the Closing Date; for this purpose, Liabilities shall mean the book value of all liabilities, including long-term indebtedness; or

(iii) if the bond indebtedness of the District has not been integrated with that of the System, an amount equal to that percentage of Net Liabilities of the System as of the termination date equal to the percentage of Net Liabilities of both System and District owed by District as of the Closing Date; for this purpose, Net Liabilities shall mean the book value of all liabilities, not including bond indebtedness.

In addition, if subsection (iii) applies. System shall transfer back to District, and District shall assume, all the original bond indebtedness of District.

In no event shall District owe System any amounts under this Subsection (d).

In the event of any termination under this section, System shall execute, acknowledge and deliver to District a proper instrument in recordable form, releasing and quitclaiming to District all right, title and interest of System in and to such property.

8.10 Holding Over.

(a) If System, with the knowledge and written consent of District, remains in possession of all or part of the real property included with the District Assets after the termination of this Agreement, and after any court disputes and appeals over such termination have been finally determined, such holding over shall be on month-to-month basis and shall not constitute a new agreement with respect to the District Assets. In such event, System shall pay District an amount equal to 2 percent per month (prorated on a monthly basis) of the value of the District Assets from assets of System which are to be retained by System until such time as the District Assets are returned to District. Nothing contained herein shall be construed as a consent by District to the occupancy or possession of the District Assets by System after termination.

(b) If System, without District’s written consent, remains in possession of all or part of the District Assets after the termination of this Agreement, System shall, in addition, be liable to District for all detriment proximately caused by System’s possession, including attorneys’ fees, costs and expenses and claims.

8.11 District’s Right to Cure Default. In the event System shall fail to pay and discharge (or cause to be paid and discharged), when due and payable, any tax, assessment, or other charge upon or in connection with the District Assets, or any lien or claim for labor or material employed or used in, or any claim for damage arising out of the repair,
maintenance and use of the District Assets, or any judgment on any contested lien or claim thereof, or any insurance premium or expense in connection with the District Assets, or any claim, charge or demand which System has agreed to pay or cause to be paid under the covenants and conditions of this Agreement, and if System, after written notice from District, shall fail to pay and discharge the same, then District may, at its sole option, pay any such tax, assessment, insurance expenses, lien, claim, charge, or demand, or settle or discharge any action therefor, or judgment thereon. All costs, expenses, or other sums incurred or paid by District in connection with such action shall be paid by System to District together with interest equal to the prime rate of Bank of America (or a successor) from the date incurred or paid. All amounts owing by System hereunder shall be added to the District Assets due District on termination.

ARTICLE 9
MISCELLANEOUS

9.1 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

9.2 Governing Law. This Agreement shall be deemed to be made in, and in all respects shall be interpreted, construed and governed by and in accordance with, the laws of the State of California, and any action regarding it shall be instituted and prosecuted only in a Municipal or Superior Court in Contra Costa County.

9.3 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

9.4 Notices. All notices or communications required or permitted under this Agreement shall be given in writing and delivered personally or sent by United States registered or certified mail with postage prepaid and return receipt requested or by overnight delivery service (e.g., Federal Express, DHL).

9.5 Survival of Representations. All the representations, warranties, covenants and agreements contained in this Agreement shall survive the Closing Date. No performance or execution of this Agreement in whole or in part by either Party, no course of dealing between or among the Parties or any delay or failure on the part of either Party in exercising any rights under this Agreement or at law or in equity, and no investigation by either Party shall operate as a waiver of any rights of such Party, except to the extent expressly waived in writing by such Party.

9.6 Expenses. Each of the Parties shall bear its own expenses in connection with the preparation and execution of this Agreement and in connection with the
transactions contemplated by this Agreement.

9.7 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

9.8 Severability. Each and every provision of this Agreement is severable and the invalidity of one or more of such provisions shall not, in any way, affect the validity of this Agreement or any other provisions of this Agreement.

9.9 Transfer Agreement. This Agreement shall be considered a "Transfer Agreement" within the meaning of Section 32121(p)(2) of the California Health and Safety Code.

9.10 Entire Agreement. This Agreement and any writing signed by the Parties contemporaneously herewith constitute the entire agreement among the Parties with respect to the subject matter and supersede any other prior understandings, negotiations and agreements.

9.11 Waivers. No waiver of any violation or breach of any of the terms, provisions or covenants of this Agreement shall be deemed or construed to constitute a waiver of any other or later violation or breach of the same or any other of the terms, provisions, or covenants. Forbearance in enforcement of one or more of its remedies upon an event of default shall not be deemed or construed to constitute a waiver of such default.

9.12 Modification. This Agreement may be modified or amended only by mutual written agreement of System and the District Board. Any such modification or amendment must be in writing, dated and signed by duly authorized representatives of System and the District Board.

9.13 Force Majeure. In the event any flood, earthquake, or other Act of God, or war, causes a Party to be unable to fulfill its obligations under this Agreement, such Party shall have no liability to the other party for such failure.

9.14 Drafting. The Parties shall be deemed the mutual drafters of this Agreement.

9.15 Exhibits. The attached exhibits, together with all documents incorporated by reference in the exhibits, form an integral part of this Agreement and are incorporated into this Agreement wherever reference is made to them to the same extent as if they were set out in full at the point at which such reference is made.

9.16 Continued Existence of District. District does not intend by the transfer of assets pursuant to this Agreement to dissolve District, de facto, or otherwise, and District
intends to maintain its existence as a local health care district organized under the Local Health Care District Law of the State of California. Subject to the terms and conditions of Section 7.13 of this Agreement, District shall continue to exercise all of its rights and powers under the Local Health Care District Law and does not hereby grant or delegate any such rights or powers. This Agreement does not vest in District or any other person or entity any right to control or govern the activities or operations of System.

9.17 **No Third-Party Beneficiary Rights.** The Parties do not intend to confer and this Agreement shall not be construed to confer any rights or benefits to any person, firm, group, corporation or entity other than the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

Mt. Diablo Health Care District, a political subdivision of the State of California

By 

Its 

Date: 8/9/96

John Muir Medical Center, a California nonprofit public benefit corporation

By 

Its 

Date: 8/14/96